

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

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5 UNITED STATES OF AMERICA,

6 Plaintiff,

7 vs.

8 FREDRICK J. LEAVITT,

9 Defendant.
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2:17-cr-00391-APG-VCF

**ORDER SETTING EVIDENTIARY
HEARING**

MOTION TO SUPPRESS [ECF NO. 41]

13 Before the Court is defendant Fredrick Leavitt's motion to suppress the defendant's interview with
14 the Department of the Interior. (ECF No. 41). The Court will hold an evidentiary hearing.

15 **BACKGROUND AND DISCUSSION**

16 A police officer is required to give a Miranda warning when a suspect is in custody. *Miranda v.*
17 *Arizona*, 384 U.S. 436, 444, 86 S. Ct. 1602, 1612, 16 L.Ed.2d 694 (1966). "Factors relevant to whether an
18 accused is in custody include: (1) the language used to summon the individual; (2) the extent to which the
19 defendant is confronted with evidence of guilt; (3) the physical surroundings of the interrogation; (4) the
20 duration of the detention; and (5) the degree of pressure applied to detain the individual." *United States v.*
21 *Beraun-Panez*, 830 F.2d 127, 127 (9th Cir. 1987). "Other factors may also be pertinent to, and even
22 dispositive of, the ultimate determination whether a reasonable person would have believed he could freely
23 walk away from the interrogators." *United States v. Kim*, 292 F.3d 969, 974 (9th Cir. 2002).
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1 Leavitt argues in his motion to suppress that he was in custody when agents interviewed him during
2 the execution of a federal search warrant at his office and that the agents did not read him appropriate
3 Miranda warnings. (ECF No. 41 at 4). The government argues in its response that Leavitt's interview was
4 noncustodial and that he was not entitled to a Miranda warning. (ECF No. 42 at 2).

5 The Court will hold an evidentiary hearing and ORDERS AS FOLLOWS:

- 6 1. Hearing date: September 30, 2019 at 10:00 am, in Courtroom 3D.
- 7 2. Pre-hearing: seven days before the evidentiary hearing by 5:00 pm, the parties must 1) fully
8 disclose all expected evidence, other than true impeachment evidence, and exchange exhibits and witness
9 lists, and 2) provide chambers a binder that contains the exhibits and witness lists.

10 DATED this 22nd day of August 2019.



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12 CAM FERENBACH
13 UNITED STATES MAGISTRATE JUDGE
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